

Rules Governing Admission to the Alabama State Bar

Rule VII.

Admission of Foreign Attorneys Pro Hac Vice.

A. Appearance of Foreign Attorneys Pro Hac Vice Permitted; Exceptions.

An attorney or counselor-at-law who is not licensed in good standing to practice law in Alabama, but who is currently a member in good standing of the bar of another state, the District of Columbia, or other United States jurisdiction (hereinafter called a foreign attorney) and who is of good moral character and who is familiar with the ethics, principles, practices, customs, and usages of the legal profession in the State of Alabama, may appear as counsel pro hac vice in a particular case before any court or administrative agency in the State of Alabama upon compliance with this rule (for purposes of this rule, an administrative agency is any board, bureau, commission, department, hearing officer, or other administrative office or unit of the State). However, except as provided in Rule VII.I., no foreign attorney is eligible to appear as counsel pursuant to this rule if that attorney (a) is a resident of the State of Alabama, or (b) is regularly employed in the State of Alabama, or (c) is regularly engaged in substantial business, professional, or other activities in the State of Alabama.

For the purposes of this rule, "pro bono counsel" is a foreign attorney who will not charge a fee and who is involved in a capital case or a postconviction proceeding for an indigent criminal defendant, hereinafter referred to as a "pro bono case."

B. Foreign Attorney Appearing Pro Hac Vice Subject to Local Jurisdiction.

A foreign attorney appearing as counsel pro hac vice before any court or administrative agency of the State of Alabama shall be subject to the jurisdiction of the courts of this State in any matter arising out of the attorney's conduct in such proceedings. The attorney shall be familiar with and shall comply with the standards of professional conduct required of members of the Alabama State Bar and shall be subject to the disciplinary jurisdiction of the courts of this State, of the disciplinary tribunals of the Alabama State Bar, and of the Board of Commissioners of the Alabama State Bar with respect to any acts occurring during the course of the attorney's appearance. By applying for pro hac vice admission, a foreign attorney authorizes the Alabama State Bar to report all information whatsoever regarding any discipline imposed in this State against the attorney, whether by the Bar or any court, to all jurisdictions in which the attorney holds a license to practice law. The court or agency may examine the foreign attorney to satisfy the court or agency that the foreign attorney is aware of and will observe the ethical standards required of attorneys in this State. If the court or agency is not satisfied that the foreign attorney is reputable and will observe the ethical standards required of attorneys in this State, the court or agency may in its discretion revoke the authority of the attorney to appear.

C. Association of Local Counsel. No foreign attorney may appear pro hac vice before any court or administrative agency of this State unless the attorney has

associated in that cause an attorney who is a member in good standing of the Alabama State Bar (hereinafter called "local counsel"). The name of local counsel shall appear on all notices, orders, pleadings, and other documents filed in the cause. Local counsel shall personally appear and participate in all pretrial conferences, hearings, trials, and other proceedings conducted in open court, unless specifically excused from such appearance by the court or administrative agency. Local counsel associating with a foreign attorney in a particular case shall thereby accept joint and several responsibility with the foreign attorney to the client, to opposing parties and counsel, and to the court or administrative agency in all matters arising from that particular cause. Pro bono counsel need not associate local counsel, but the judge may require pro bono counsel to provide a referral letter from a local attorney.

D. Verified Application. In order to appear as counsel before a court or administrative agency in this State, a foreign attorney shall file with the court or agency where the cause is pending a verified application for admission to practice, together with proof of service by mail, in accordance with the Alabama Rules of Civil Procedure, of a copy of the application and of the notice of hearing upon the Alabama State Bar at its Montgomery, Alabama, office. In the event application is made before any defendant in an action has appeared, a copy of the application and notice must also be served upon such defendant. The copy of the application and the notice of hearing served upon the Alabama State Bar shall be accompanied by a nonrefundable \$300 filing fee. The notice of hearing shall be given at least 21 days before the time designated for the hearing, unless the court or agency has prescribed a shorter period.

Upon receipt of any application for admission, the Alabama State Bar shall file with the court or agency and serve upon all counsel of record, or upon any parties not represented by counsel, and upon the applicant, before the scheduled hearing date, a statement indicating whether the applicant or other attorney members of the firm with which he or she is associated have previously made any application for admission, the date of such application, and whether it was granted. No application shall be granted before this statement of the Alabama State Bar has been filed with the court or agency. Once this statement is received, the court or administrative agency shall issue an order granting or denying the application. A copy of each order granting or denying an application shall be mailed by the local counsel to the Alabama State Bar at its Montgomery, Alabama, office.

Pro bono applications need not be accompanied by a filing fee and must be filed no later than the first occasion on which pro bono counsel files any pleading or paper with the court or otherwise personally appears. No hearing on a pro bono application is required. No statement from the Bar is required for pro bono applicants, but a copy of the verified application still must be filed with the Bar.

E. Form of Application. The application required by this rule for a foreign attorney other than pro bono counsel shall be on a form approved by the Alabama State Bar and shall state: (1) the applicant's residence; (2) the court or courts to which the applicant has been admitted to practice and the date or dates of admission; (3) that the

applicant is a member in good standing of such court or courts (with such exceptions as may be the case); (4) that the applicant is not currently suspended or disbarred from practice in any court (stating exceptions); (5) the title of the court and cause in which the applicant or any member of the firm of attorneys with which the applicant is associated has filed an application for admission as counsel under this rule in this State in the preceding three years, the date of each application, and whether it was granted; (6) the name, address, and telephone number of local counsel who is attorney of record; and (7) the name of each party and the name and address of counsel of record who appeared for that party. The applicant shall also provide such other information and statements as may be called for by the form. A separate application form has been approved for pro bono counsel.

The application forms for foreign attorneys wishing to appear pro hac vice, including the form for pro bono counsel, may be obtained from PHV Admissions, Alabama State Bar, P.O. Box 671, Montgomery, AL 36101 (334-269-1515), or from the Alabama State Bar's Web site: www.alabar.org or by e-mailing the PHV Admissions at PHV@alabar.org.

Before any application is granted, in cases where local counsel is required, local counsel must appear as attorney of record in the particular cause or must consent in writing to the association.

The granting or denial of an application for admission as counsel pursuant to this rule is discretionary with the court or administrative agency before which the application is made. A trial or appellate court may, in a particular proceeding pending before it, deny an application for admission as pro bono counsel pursuant to this rule only where the applicant's conduct as a lawyer, including conduct in proceedings in Alabama in which the applicant has appeared pro hac vice and conduct in other jurisdictions in which the lawyer has practiced, raises reasonable doubt that the lawyer will comply with the Alabama Rules of Professional Conduct and other rules and law governing the conduct of lawyers who appear before the courts of Alabama.

Absent special circumstances, repeated appearances by any person or firm of attorneys, other than pro bono counsel, pursuant to this rule shall be cause for denial of an application. In any case, other than a pro bono case, where the foreign attorney has entered an appearance pro hac vice in 5 cases within the preceding 12 months, the court or administrative agency shall examine the foreign attorney to establish good cause for according such privilege, including facts or circumstances affecting the personal or financial welfare of the client and not the attorney. Such facts may include, but are not limited to, the following: (1) a showing that the cause involves a complex field of law in which the foreign attorney is a specialist, (2) a long-standing attorney-client relationship, (3) lack of local counsel with expertise in the field involved, (4) the existence of legal questions involving the law of a jurisdiction in which the foreign attorney regularly practices, or (5) the need for extensive discovery proceedings in the foreign jurisdiction.

In the event the action or cause is transferred from one court or administrative agency of this State to another or in the event the action is appealed, a foreign attorney authorized to appear in the cause while it was pending before the first court or administrative agency shall be deemed admitted to the court or agency to which the cause has been transferred or appealed; provided, however, that the court or agency having jurisdiction over the transferred or appealed cause may, for good cause, revoke the authority of the foreign attorney to appear. (See Section F, "Appearance Before an Appellate Court.")

F. Appearance Before an Appellate Court. Upon filing an appearance in a matter in an appellate court of this State (i.e., the Supreme Court, the Court of Civil Appeals, or the Court of Criminal Appeals), a foreign attorney previously admitted to appear in the matter before a trial court or administrative agency shall furnish to the clerk of the appellate court proof of the previous admission, along with a certification by the foreign attorney that the admission has not been rescinded.

If the appearance before the appellate court is to be the foreign attorney's first appearance in the matter, then admission shall be by motion to the appellate court, and the motion shall be supported by a certificate of good standing from the bar of another United States jurisdiction.

Any foreign attorney moving for admission to appear before an appellate court of this State, other than pro bono counsel, shall be required to associate local counsel, whose name, address, and telephone number shall be included in the foreign attorney's motion for admission. Although local counsel is not required to be an active participant in the matter, the foreign attorney is required, in the motion for admission pro hac vice, or in the initial filing in the appellate court (in the event the foreign attorney has been previously admitted in the matter by a trial court or an administrative agency), to designate which attorney shall be lead counsel for purposes of service in the manner prescribed in the Alabama Rules of Appellate Procedure. On proper motion, and for good cause shown, the appellate court may waive the required association of local counsel. In pro bono cases, the required association of local counsel shall be waived.

A foreign attorney admitted to practice in a matter before the Court of Criminal Appeals or the Court of Civil Appeals is deemed admitted in any subsequent proceedings in that same matter before the Supreme Court.

At any time, for good cause shown, and on the application of any party, the previous order admitting the foreign attorney to practice in a matter may be reviewed and/or rescinded, without hearing, by the appellate court before which the matter is then pending.

G. Quarterly Report. The executive director of the Alabama State Bar shall prepare a quarterly report listing all applications filed during that quarter and during the preceding 12 months and listing the names of the applicants and indicating as to each application whether the application was granted or denied. The report shall be

transmitted to the clerk of each circuit and district court, each circuit and district judge, the clerk of the Supreme Court, and such other persons as the Board of Commissioners directs.

H. Suspension or Disbarment Terminates Permission to Appear Pro Hac Vice. Suspension or Disbarment Terminates Permission to Appear Pro Hac Vice. Permission for a foreign attorney to appear pro hac vice under the provisions of this rule shall terminate upon that attorney's suspension or disbarment in any jurisdiction in which the foreign attorney has been admitted. The foreign attorney shall have the duty to promptly report to the court or administrative agency of this State before which the attorney is appearing any disciplinary action that has been taken against the attorney in any other jurisdiction.

In the event local counsel in a particular case is suspended or disbarred from the practice of law in the State of Alabama, the foreign attorney shall, before proceeding further in the pending cause, associate new counsel who is in good standing to practice law in the State of Alabama and shall file a verified notice thereof with the court or administrative agency of this State before which the foreign attorney is appearing.

I. Exceptions. Nothing in this rule shall be construed to prohibit any foreign attorney from appearing before any court or administrative agency of this State on his or her individual behalf in any civil or criminal matter. Foreign attorneys representing the United States Government shall be permitted to appear and to represent it in any matter in which it is interested, without the association of local counsel.

J. Enforcement. No clerk or filing officer of any administrative agency of this State shall accept for filing any pleadings or other documents from a foreign attorney who has not complied with the requirements of this rule. Any pleadings or other documents filed in violation hereof shall be stricken from the record upon the motion of any party or by the court or administrative agency sua sponte; provided, however, that in a pro bono case pleadings or other documents shall be accepted for filing from pro bono counsel who has submitted an application in accordance with the requirements of this rule.

The courts and administrative agencies of this State shall have the duty to enforce the provisions of this rule by denying violators the right to appear. If a foreign attorney engages in professional misconduct during the course of an appearance, the judge or the hearing officer of the administrative agency before which the attorney is appearing may revoke permission to appear pro hac vice and may cite the attorney for contempt. In addition, the judge or hearing officer shall refer the matter to the Disciplinary Commission of the Alabama State Bar for appropriate action.

Violation of this rule is deemed to be unlawful practice of law. The Alabama State Bar or its designated commissioners shall have the right to take appropriate action to enforce these Rules under the provisions of Ala. Code 1975, § 34-3-43. The provisions

of this rule shall be cumulative to all other statutes and rules related to or dealing with the unauthorized practice of law within the State of Alabama.

[Amended eff. 6-19-92; Amended eff. 10-1-92; Amended 5-1-93, eff. 1-1-94; Amended eff. 9-19-2006; Amended eff. 5-2-2007; Amended 11-8-2007; Amended eff. 1-11-2013.]

Committee Comment to Amendment Effective September 19, 2006

Alabama courts have recognized that this State faces considerable challenges in providing adequate legal representation for indigent persons, particularly criminal defendants in postconviction proceedings. *Ex parte Jenkins*, [Ms. 1031313, April 8, 2005] ___ So.2d ___ (Ala.2005). In order to facilitate the provision of indigent defense services by foreign attorneys who volunteer to represent indigent defendants pro bono, this rule has been amended to omit certain requirements for the pro hac vice admission of pro bono counsel. In addition, the amendment authorizes the Alabama State Bar to report all information regarding any discipline imposed in the State against an attorney admitted pro hac vice to all jurisdictions in which the attorney is licensed to practice law.

Note from the reporter of decisions: The order amending Rule VII and Rule IX.G.(1), effective September 19, 2006, and adopting the Committee Comment to Rule VII and the verified application for admission of pro bono counsel is published in that volume of *Alabama Reporter* that contains Alabama cases from 939 So.2d.

Note from the reporter of decisions: The order amending Rule VII.D., Rules Governing Admission to the Alabama State Bar, effective May 2, 2007, is published in that volume of *Alabama Reporter* that contains Alabama cases from 955 So.2d.

Note from the reporter of decisions: The order amending Rule VII.D., Rules Governing Admission to the Alabama State Bar, effective November 8, 2007, is published in that volume of *Alabama Reporter* that contains Alabama cases from 972 So.2d.

Note from the reporter of decisions: The order amending the Rules Governing Admission to the Alabama State Bar is published in that volume of *Alabama Reporter* that contains Alabama cases from ___ So. 3d.